WISCONSIN CATHOLIC CONFERENCE

TO: State Representative Brett Davis, Chair
Members, Assembly Committee on Education

FROM: Barbara Sella, Associate Director

DATE: March 27, 2007

RE: Assembly Bill 30—Felon Bias

The Wisconsin Catholic Conference appreciates the opportunity to provide informational testimony on Assembly Bill 30, which would permit public and private schools to refuse to employ or to terminate from employment an unpardoned felon.

Our interest in this legislation is twofold. First, we strongly believe that all children deserve a safe environment in which to learn. There are multiple threats to the safety of our children outside the school doors. We applaud efforts to maintain a safe place within all schools. And we support the provisions of current law that permit employers to deny a job to a person who has been convicted of a crime that is related to the job he or she is seeking.

We also believe in public policies that foster restoring both victims of crimes and offenders to full participation in the community. In 1999, Wisconsin's Roman Catholic bishops issued *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin.* In their statement, the bishops stress the importance of mercy and forgiveness and call for society to exercise mercy as a means of furthering the rehabilitation process. The bishops also emphasize that public policies and responses must be fashioned in ways that heal victims betrayed by crime and restore dignity to offenders.

An important part of ensuring that felons regain dignity is access to employment opportunities that allow them to support themselves and their families.

We believe that AB 30, as currently drafted, is broader than necessary to achieve its goals. As drafted, AB 30 limits the ability of offenders to secure gainful employment even when their crimes are unrelated to the position they are seeking or to the life and security of our children.

As an alternative, we invite you to consider an approach suggested in 2001 in the form of Assembly Substitute Amendment 1 to 2001 AB 4. This alternative is based on the provisions of Wis. Stat. sec. 118.19, governing teacher licensure which provides that the state superintendent may not license a person as a teacher if the applicant has been convicted of a felony (Class A, B, C or D) under Chapter 940 (which addresses crimes against life and bodily security) or Chapter

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948 (which addresses crimes against children) until six years have passed since the conviction and the person establishes by clear and convincing evidence that he/she is entitled to a license.

Inasmuch as teachers have the most unsupervised face-to-face contact with our children it seems unreasonable to place a greater barrier to employment before other employees who have less access to children. At the same time, limiting this bill to crimes mentioned in 118.19 also provides more clarity as to which offenses warrant denying employment.

Finally, we urge you to consider the impact of AB 30 on people of color. Though less than ten percent of our state's population, minorities account for nearly half of our prison population. Unemployment among African-American men is still more than double that of white men. It is important to assess how this bill will affect that statistic.

Last week, on March 22, a joint hearing of the Assembly Corrections and Courts Committee and the Senate Judiciary and Corrections Committee heard invited testimony on the issue of prisoner re-entry. The strong sentiment of most in attendance was that more needs to be done to help with the re-entry and reintegration of ex-offenders. Legislation like AB 30, unless amended along the lines we have suggested, would make such reintegration efforts more difficult.

We believe current law in this area has served us well. Wisconsin continues to have lower crime rates than the rest of the nation. Clearly, the fact that a felon can't be denied a job unless his crime is related to the position he seeks has not made Wisconsin a dangerous place to work or live. Rather, one can argue that our crime rate is lower because our laws make it easier for ex-offenders to support themselves upon completion of their sentence.

We appreciate the opportunity to offer this informational testimony on AB 30. We respectfully request the committee to carefully consider the ramifications of a bill that could contribute to significant recidivism rates in Wisconsin.

WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

Every kid deserves a Great School!

Written Testimony Submitted by
Wisconsin Education Association Council
Public Hearing of the Assembly Committee on Education
March 27, 2007

OPPOSE AB 30

The Wisconsin Education Association Council strongly opposes AB 30. This bill would allow educational agencies to refuse to hire or to terminate from employment any individual who has been convicted of a felony and has not been pardoned, regardless of his or her crime, how long ago it was committed, or what job he or she holds. Current law states that an employer can refuse to hire or can terminate from employment a person based on a conviction record that substantially relates to his or her job.

Wisconsin's Fair Employment Act already provides employers broad discretion to determine whether a substantial relationship exists between a person's crime and the job at hand. Consequently, current law, properly interpreted, already permits educational agencies to refuse to hire convicted felons, as well as those convicted of a misdemeanor, who may pose a threat to the safety of students. There is no need for this bill.

Governor Doyle's veto message of an identical bill from July 24, 2003, provides statistics to demonstrate that current law works: "According to the Equal Rights Division of the Department of Workforce Development, there were 320 complaints of conviction record discrimination in 2002, including nine complaints against educational agencies. There were 28 findings of probable cause, none of which were against educational agencies, and only one finding of actual discrimination based on conviction record against a retail store. These statistics show that employers can currently consider conviction records without being found to discriminate." Specifically pertaining to schools, the required background checks for school employees coupled with the Fair Employment Act provide protections for the employer and the school children without depriving ex-offenders of the right to re-enter society once they have served their sentences.

By unnecessarily broadening current law, this bill would also subvert the state's efforts to promote greater public safety by rehabilitating individuals convicted of a felony. If a person is a convicted child molester, that person most certainly should be denied employment in a school. Current law gives educational agencies that authority. However, if a person's conviction is unrelated to employment, the mere fact that a person has been convicted of a felony at some point in his or her life should not necessarily disqualify them from employment. Additionally AB 30 defines "educational agency" so broadly as to include state correctional institutions and mental health institutes.

Stan Johnson, President
Michael A. Butera, Executive Director

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Governor Doyle's veto message from 2003 states it best: "It is well established that employment is a key crime prevention tool. Ex-offenders are much less likely to commit a new crime if they have steady employment. This bill, if it were to become law, would increase barriers for ex-offenders to secure and maintain employment and, as a result, has the very real potential to increase crime and jeopardize public safety."

For More Information:

If you have any comments or questions regarding this statement, please contact Michael Walsh, WEAC Government Relations Specialist, by phone at 800-362-8034 or by e-mail at walshm@weac.org. Thank you.

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TO: Assembly Committee on Education

FROM: Bob Andersen

RE: Assembly Bill 30, relating to: Permitting an Educational Agency to Refuse to Employ or to Terminate from Employment an Unpardoned Felon.

DATE: March 27, 2007

1. **AB 30 is Going in the Wrong Direction: The Movement Nationally and in Wisconsin is Towards Rehabilitating Ex-Convicts in the Face of Massive Incarceration Efforts Over the Past Several Years.**

650,000 people are released from prisons and over 7 million people are released from jails each year nationally, according to the Re-Entry Policy Council. Virtually every person incarcerated in a jail in this country – and 97 percent of those incarcerated in prisons – will eventually be released. The Re-Entry Policy Council was established in 2001 by The Council of State Governments to assist state government officials grappling with the increasing number of people leaving prisons and jails to return to the communities they left behind.

In 2004, 500 felons were released from prison to Dane County, according to an article by Phil Brinkman for the Wisconsin State Journal (WSJ – September 27 2005).

According to the Bureau of Justice Statistics of the U.S. Department of Justice, there were ***8,107 inmates released from prison in 2003*** in Wisconsin. According to the Wisconsin Office of Justice Assistance, there were ***266,343 estimated adult admissions to jails in Wisconsin in 2003***. In addition, there were an estimated ***11,075 admissions of 17 year olds in 2003***. Because jail inmates are in jail for only a relatively short period of time, ***they will almost all be released within the year.***

The state's inmate population has tripled in 15 years, from less than 7,000 in 1989 to more than 22,000 today, according to a January 17, 2005 WSJ article by Brinkman. The incarceration rate has also nearly tripled.

National studies indicate as many as 60 percent of inmates remain unemployed one year

after release, while two in three are re-arrested within three years and nearly one-half will end up back in prison, according to a January 16, 2005 WSJ article by the same author. The cost to taxpayers can be enormous. It costs Wisconsin taxpayers $28,088 on average per year to keep each of the estimated 22,000 men and women in prison and $2,041 a year supervising more than 67,700 people on probation or parole, according to the same article.

These and other statistics have led the Wisconsin State Journal to editorialize that we need to be effective, not soft on crime (January 28,2005). We need to "recruit employers to hire former inmates. Many offenders have poor work histories but those under close supervision will have a compelling incentive to show up on time and ready for work."

These articles of the Wisconsin State Journal are part of a series that may be found at http://www.madison.com/wsj/spe/prison. They are a series of 15 articles exhorting the public and policy makers to make sensible decisions about treating crime and the rehabilitation of ex-convicts.

A January 22, 2005 WSJ article summed up the shift in direction that has been occurring among policy makers by quoting former State Senator Bob Welch, in remarks he made about creating halfway houses for the reintegration of offenders. The article said that "Welch had been one of the strongest supporters during the 1990's for longer prison terms and abolishing parole."

It quoted Welch as saying, "As far as I am concerned, I was on the winning side of that and got my way. . . Now, I am circling back and saying, 'OK, now that I know we're going to lock up the bad guys for a sufficient length of time, now we've got to look at what happens when they get out."

2. Employment is Critical in the Rehabilitation of Ex-Offenders and the Treatment of Ex-Offenders has a Profound Effect on African Americans.

Numerous studies conducted in the past show the importance of meaningful employment in the rehabilitation of ex-offenders. In a recent study, Princeton University Department of Economics Professors Bruce Western, Jeffrey Kling, and David Weiman, in their January 2001 publication entitled, "The Labor Consequences of Incarceration," found that the treatment of ex-offenders has a profound effect on African-American males. ***On a typical day two years ago, Professor Western was quoted as saying, 29% of young African American male high school dropouts ages 22-30, were employed, while 41% (up from 26% in 1990) were in prison. He said that ex-offenders who do get jobs start work making 10-30% less than other African American high school dropouts.***

Professor Western also said that, without adequate jobs, these ex-offenders are unable to pay court costs that come out of their convictions, restitution to victims, and child support

for their families. Professor Western was quoted to say that "we know that employment discourages crime, and because their employment opportunities are poor, they're more likely to commit crime again."

3. **Assembly Bill 30 is Too Broad in Its Definition of What Employers are Covered**

The definition of an "educational agency" goes far beyond the elementary school setting that the authors of this bill generally have in mind with this bill. It covers a wide range of facilities that house adults: "a state correctional institution under s. 302.01, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, and a state center for the developmentally disabled." First, these are institutions who take care of adults who are not the people that this bill seeks to protect. The enactment of this bill would adversely affect employees in settings where children are not involved. Secondly, these are also institutions who employ invaluable people who are likely to have felony records. The mental health institutes have teachers and counselors, among others, who are among the best at their trade because they have had drug problems that left them with felony convictions.

4. **The Bill Does Not Cover the Employees of Entities that Contract with Schools – Such as School Bus Drivers and Janitors – Fortunately, Current Law Allows Schools to Refuse Jobs To These Employees Where the Circumstances of Their Convictions Relate to the Circumstances of Their Jobs**

The bill does not include the employees of employers who contract with the schools. This means that the employees of employers who contract with the schools to provide transportation services and janitorial services, for example, are not covered by this bill. The fact is that, if you do have someone who is dangerous to children, probably the last place you want them to be working is on a school bus or in rest room where there is no supervision and where the chance for harm is even greater.

Fortunately, current law covers these employees and provides that they will not be employed where the circumstances of their convictions would make it dangerous for contracting employers to employ them on school buses and in rest rooms.

5. **Current Law Allows Employers, Including Schools, to Discriminate Against Employees on the Basis of Conviction Records, Where the "Circumstances of the Offense Substantially Relate to the Circumstances of a Particular Job." – AB 30 Allows Employers to Discriminate Against Employees Solely Because They Checked a Box Marked "Felony Convictions" Alone.**

Under ***current law***, a public or private employer may refuse to hire someone, or may terminate the person's employment, on the basis of ***any conviction record***, if there is a ***substantial relationship*** between the ***circumstances*** of that ***offense*** and the

circumstances of the particular job. This is perceived to be a better approach than looking only at the ***conviction***, because looking at the circumstances involved in the crime is far more revealing for an employer than looking only at what a person was convicted of -- especially where the person was convicted of a lesser offense. Current law does ***not require*** an employer to hire a person with a conviction record; it simply does ***not allow an employer to automatically*** reject an applicant who has checked a box on an application marked "felony conviction," for example. ***Employers can refuse to hire someone for any other reason. AB 30*** would allow these employers ***to automatically reject*** an applicant or fire an employee with ***any felony record***, for ***simply having checked a box marked "felony conviction."*** Over the years, a great number of crimes have been reclassified as felonies -- resulting in 5 different classes of felonies today. Heading #11 below reveals the host of felonies which would allow these employers to automatically reject applicants or to fire employees who have been convicted of offenses which may well bear no relationship to the circumstances of their particular jobs.

6. **Automatically Denying Jobs to Applicants Based on Felony Records Frustrates State Efforts to Put its Residents to Work, Contributes to Recidivism, and Endangers State Residents' Safety and Property.**

If AB 30 were to be enacted, these employers would still be able to hire an applicant with a felony record, of course. However, the enactment of this bill would promote a policy for these employers statewide that would deny employment to people based solely on their felony convictions. This frustrates the goal of the state in ensuring that its residents are engaged in gainful employment. It frustrates the goals and success of W-2, because many W-2 participants have felony convictions in their past, especially since the definition of felonies has been broadened. In addition, without employment, people are driven to commit crimes to support themselves. Numerous studies have shown that employment is one of the most important factors in combating recidivism. When people are driven to commit new crimes, more residents of the state become the victims of crime.

7. **Current Law is Not a Burden on Employers**

According to the testimony of the Equal Rights Division of the Department of Workforce Development on this same legislation during the 2003 session, following is the record of these cases for 2001 and 2002:

> For calendar years 2001 and 2002, the following number of complaints involved an allegation of conviction record discrimination against an educational agency:
>
> 5 complaints in 2001
> 9 complaints in 2002
>
> During those years, there were no findings of probable cause against any

educational agency, no appeals of findings of no probable cause and no hearings held. Three of the complaints received in 2002 remain in investigation.

This is consistent with an article in the August 28, 1999 edition of the *Milwaukee Journal Sentinel*, which reported that for ***all employers*** the records of the Equal Rights Division indicate that from January 1, 1997 to August 26, 1999, a total of ***131*** claims of discrimination based on arrest or conviction records were filed. Of those, only ***22*** were shown to have probable cause -- meaning that the claims would go any further. Of those, in only ***2*** claims was it shown that the action of the employer was in violation of the law.

In other words, in almost all claims there is always some "substantial relationship between the circumstance of the offense and the circumstances of the job."
For example, in one of the few court decisions to come out of the statute, the Supreme Court found that there was a "substantial relationship" between a record of armed robbery and a job as a bus driver, so as to entitle the employer to refuse the job to the applicant on that basis alone. ***Similarly, LIRC and county court decisions have held that convictions involving drug trafficking are substantially related to jobs as a district agent for an insurer, youth counselor for emotionally disturbed juveniles, a school bus driver, a home health aid, a paper mill machine operator, and a door to door salesman.***

With this stark reality as a background, anecdotal claims of inconvenience for employers or of cases that are contrived by lawyers to extort money from employers become difficult to imagine.

8. **The Value of Current Law, Then, is Simply to Prevent Employers from Establishing Application Forms that Automatically Reject Applicants who Check a Box Marked "Felonies."**

Under current law, these employers can easily refuse to hire someone for "other reasons," or because they want to hire someone else. They simply cannot say they are refusing to hire someone because of a "felony conviction" ***alone***.

9. **Current Law is a Codification of Decisions of the U.S. Supreme Court, Federal and State Courts, the Equal Employment Opportunities Commission (EEOC) and the State Equal Rights Division (ERD), Holding that Discrimination Against Minorities on the Basis of Conviction Record, in the Absence of "Business Necessity," Constitutes Race Discrimination – The Enactment of AB 284 Will Not Change This Law.**

The U.S. Supreme Court ruled in Griggs v. Power Co., 401 U.S. 424 (1971), that discrimination based on circumstances which have a "disparate effect" on persons because of their race or national origin, ***is in fact*** discrimination based on ***race or***

national origin and is prohibited by Title VII of the Civil Rights Act of 1964, ***in the absence of a showing of "business necessity"*** in a particular case. This decision was followed by a number of federal and state court decisions, and decisions of the EEOC and ERD, in ruling that discrimination based on criminal record for minorities is in fact discrimination based on race or national origin, in violation of Title VII of the Civil Rights Act of 1964. This is so, because minorities have a greatly disproportionate record of convictions. The logic, then, is that to refuse employment or to take other adverse job treatment of a minority because of a record of conviction, without an adequate business reason, is in fact an adverse treatment of an employee because of race or national origin. It is racial discrimination in violation of Title VII and in violation of Wisconsin's statutory prohibition against discrimination based on race.

The Equal Employment Opportunities Commission (EEOC) states in its guidelines that an employer may only exclude an applicant because of a criminal conviction if there is a business necessity.

"To establish business necessity, the employer must show that three factors were taken into consideration in the hiring decision: the nature and gravity of the offense(s); the time that has elapsed since the conviction and/or completion of the sentence; and the nature of the job held or sought," according to the EEOC. "For example, business necessity exists where the applicant has a fairly recent conviction for a serious offense that is job-related."

The "disparate impact" theory is still the law of the land. In April, 2002, the U.S. Supreme Court dismissed an appeal in an age discrimination case challenging the "disparate impact" theory, Adams v. Florida Power Corporation, No. 01-584. While there was no explanation given by the court for its dismissal, it was a dismissal of a case that the court had earlier approved for appeal and had even heard arguments on. In any event, the dismissal of the case means that the "disparate impact" theory is still the law.

10. Other States' Laws

Several states fair employment agencies and courts have issued decisions based on "disparate effect." Some have included "disparate effect" in their administrative rules or statutes, e.g. Iowa. In addition, at least the following several states have created special laws -- either by statute or by administrative action of Human Rights Commissions -- prohibiting discrimination based on conviction:

There have been at least two recent developments in other states, as states attempt to address the growing problem of putting ex-offenders to work:

Delaware enacted a law last year lifting the ban on licensing for individuals with felony convictions for over 35 professions and occupations. The legislation provides that licenses may only be refused if the applicant has been convicted of crimes that are "substantially related" to the licensed profession or occupation.

Illinois enacted a law this year that provides that the records of most misdemeanors and Class 4 felony violations are to be sealed, provided that certain conditions are met. The sealing of the records means that they cannot be part of an official record that can be used against people. The conditions are that 3 years have elapsed for misdemeanors and 4 years for felonies, and the persons have not committed another offense.

Illinois Commission Guidelines also have been existence for some time and have the force of law and similarly applies to all employers:

> "Use of such criteria [arrest or conviction information] operates to exclude members of minority groups at a higher rate than others, since minority members are arrested and convicted more frequently than others. Such criteria are therefor unlawfully discriminatory unless the user can demonstrate in each instance that the applicant's record renders him unfit for the particular job in question." An applicant may be disqualified for a job based on a conviction if "(I) state or federal law requires the exclusion or (ii) the nature of the individual's convictions considered together with the surrounding circumstances and the individual's subsequent behavior reveals the individual as objectively unfit for the job." [emphasis added]

Otherwise, the following states maintain similar restrictions:

Hawaii prohibits both private and public employers from discriminating because of any court record, unless a criminal conviction record bears a rational relationship to the duties and responsibilities of a particular job.

New York statutes prohibit discrimination by any employer based on the applicant or employee having committed a criminal offense, ***without allowing employers any exception***.

Washington prohibits discrimination by any employer on the basis of conviction records, except for those related to a particular job which are ***less than 7 years old***, under regulations issued by the Washington State Human Rights Commission.

Minnesota provides that consideration of a criminal record by a private employer cannot be an absolute bar to employment and that the job-relatedness of the crime must be considered, under the administrative policies set forth in the Minnesota Department of Human Rights Pre-Employment Inquiry Guide. The guide is not an administrative rule, but the effect is the same, since it would be risky to ignore it, because it is the state agency's interpretation of state law.

Colorado's Civil Rights Commission similarly has issued a pre-employment guide which

provides that it may be a discriminatory practice for an employer to even make any inquiry about a conviction or court record that is not substantially related to job. While this is not expressed as a mandate, again, it would be risky to ignore it, since it is an interpretation of state law by the state agency.

Ohio's Civil Rights Commission pre-employment guide similarly advises employers that even any inquiry into convictions of applicants for jobs is unlawful, ***without any reference to "substantial relationship."***

Connecticut statutes prohibit state employers from discriminating based on conviction record, unless the employer considers ***all*** of the following: (1) the relationship of the crime to the job; (2) the rehabilitation of the applicant or employee; and (3) the time that has elapsed since the conviction or release of the applicant from prison or jail.

Florida statutes prohibit a state or municipal employer from discriminating based on a conviction record, unless the crime is (1) either a felony or first degree misdemeanor and (2) is ***directly related*** to the employment position sought. In other words, an applicant may not be discriminated against for having committed a lesser misdemeanor, even if it is directly related to the job.

11. **Limiting the Repeal of the Prohibition to Only Felony Convictions, Still Extends the Repeal to a Broad Range of Conduct, Especially as More Crimes Have Become Classified as Felonies over the Years**

Over the past several years, the list of felonies has exploded. What used to be a misdemeanor, in many cases, is now a felony. Section 939.50 of the statutes now lists nine different classes of felonies. The following offenses are felonies: possession of controlled substances (which accounts for the great majority of criminal offenses); $500 or more damage to a coin operated machine; graffiti to a sign of a public utility or common carrier; graffiti damage to any other person's property that exceeds $2500; operating a vehicle without the consent of the driver; removal of a part of a vehicle without the owner's consent; issuance of a check for more than $2,500 with insufficient funds in an account; forgery; property damage to a public utility; stalking with the use of public records or electronic information; threat to accuse another of a crime; theft of property in excess of $2,500; threat to communicate derogatory information; receiving or concealing stolen property of a value in excess of $2,500; distribution of obscene materials; solicitation of prostitution; conducting an unlawful lottery; bribery; bribing a public official; possession of burglary tools with the intent to enter a room or building designed to keep valuables; providing special privileges to a public official in return for favorable treatment; theft of cable or satellite services; theft or fraud against a financial institution of more than $500; cohabitation with another by a married person; failure to pay child support for 120 days; action by a public official to take advantage of office to purchase property at less than full value; interference with the custody of a child for more

than 12 hours; perjury; false swearing; destruction of public documents subject to subpoena; making a communication to influence a juror; fraud on a hotel or restaurant owner in excess of $2,500; transferring real or personal property known to be subject to a security interest; threatening to impede the delivery of an article or commodity of a business; damage to mortgaged property in excess of $2,500; threatening to influence a public official to injure a business; falsification of records by an officer of a corporation; destruction of corporate books by an officer of the corporation; fraudulent use of credit cards; theft of telecommunications services, cellular telephone services, or cable TV services for the purpose of financial gain; modifying or destroying computer data to obtain property; adultery; incest; theft of library materials of a value in excess of $2,500; criminal slander of title of real or personal property; flag desecration; theft of trade secrets; retail theft of a value in excess of $2,500; intentional failure of a public official to perform a ministerial duty; and providing false information to an officer of the court.

12. **The Debate on this Bill Over the Past Several Sessions is Now Dwarfed by a New Development – the Creation of CCAP for Easy Internet Access for Anybody to Check Up on Anybody Else's Arrest or Conviction Record.**

CCAP is a public domain created by the Wisconsin court system that now allows anybody access to the records of their fellow citizens at the touch of a button on their own personal computers. It has been recorded that there are over 1,000,000 hits per day on CCAP, according to the Director of State Courts, John Voelker. Employers checking out potential employees, landlords checking out potential tenants, parents checking out the backgrounds of boys who want to go out with their daughters, young people checking out others that they may want to date, neighbors checking out the background of their neighbors.

The existence of this new system underscores both (1) the need for the current statute requiring employers to show that there is a substantial relationship between the circumstances of a felony conviction and a particular job, because of all the information that is out in the public now and (2) the vitality of an argument that has been made against this legislation from the very beginning – that employers ***in fact*** refuse to hire people with felony records. They just don't make it known that the ***reason*** they refuse to hire someone is because of a felony record. ***The law does not require an employer to hire a felon.*** And the new CCAP internet system allows employers plenty of ability to find out about an arrest or criminal record and to refuse to hire the individual for no particular reason at all. ***About the only time that an employer would get caught by this statute is if the employer deliberately announced he was not hiring a person because of a felony record, so that the employer could set up a test case.***

Given this reality, why then is this current statute so important? Because, without it ***educational institutions*** would simply have a box on their applications which asks whether the applicant has ever had a felony record. Once the box is checked by an intake

worker, the application will be set aside and the person will be automatically rejected.

Details about the growing CCAP system emerged from the testimony and discussions recently created Legislative Council Committee on Expunction of Criminal Records. The system is far from perfect. Once a criminal charged is dropped against a defendant, the records are not taken off the internet. There is a parallel system for recording records in Wisconsin operated by the Crime Information Bureau. For that system, once a District Attorney drops a charge, the records have to be taken off the system altogether. So, for CCAP, even innocent people are stigmatized.

CCAP claims to have improved its system by providing a summary of what has happened in each case. The problem with this is that readers either never get past the first message that someone is being prosecuted or, if they do, they don't fully understand what follows. Their overall impression for someone whose charges have been dropped or who were found innocent, is likely to be that the individual got off on a technicality. As a result, people who are innocent are wrongly stigmatized.

In the context of the work of this Legislative Council Committee, it is interesting to note that a business representative on that committee, who is a lawyer, said that the current statute works fine. He liked the expression that there has to be a substantial relationship between the circumstances of the offense and the circumstances of the job, which he thought is reasonable and has worked well. His comments were made when he asked why there should be any need for improvement of the law on expunction, which also addresses employment problems.

The Director of State Courts, John Voelker, told the committee that the WCCA oversight committee initially approached the legislature to address [1] whether CCAP information should be continued (because of its profound effect on employment, housing, "nosey neighbors," etc.); [2] whether information could be made to be more accurate (again with the same considerations in mind); and [3] whether a new mechanism should be created to allow information to be removed from the data base.

Individual Rights & Responsibilities Section

State Bar of Wisconsin
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March 27, 2007

TO: Members of the Assembly Committee on Education

FROM: Attorney David Lasker
Individual Rights and Responsibilities Section
State Bar of Wisconsin

RE: Opposition to AB 30 (Employment Discrimination)

The Individual Rights and Responsibilities (IRR) Section of the State Bar of Wisconsin opposes Assembly Bill 30 because it would close the doors to employment opportunities for ex-offenders without justification. This legislation would allow an educational agency to refuse to employ or to terminate from employment a felon, regardless of whether the elements of the offense relate at all to the circumstances of a particular job. The bill would result in denial of jobs to qualified applicants, frustrating the State's efforts to reintegrate ex-offenders into society and its efforts to reduce recidivism.

Employment of offenders who have paid their debt to society plays an important role in reintegrating them back into the community and reducing recidivism. Everyone benefits when ex-offenders successfully turn their lives around to become contributing, law-abiding members of the community – the neighbor, the family, the friend and the taxpayer.

When the doors to employment opportunities are shut, it makes it that much harder for ex-felons to begin anew and steer clear of crime. As more crimes are classified as felonies, ex-offenders will find it increasingly more difficult to find a job. Denial of gainful employment can drive criminals to reoffend. When this happens, a heavy price is paid: public safety is jeopardized; our courts are burdened; and state taxpayers are saddled with the ever-increasing cost of our correctional system.

Should employers ever be allowed to deny someone an employment opportunity based on his or her criminal record? State law already says yes. Current law allows employers, including schools, to discriminate on the basis of conviction record where the "circumstances of the offense substantially relate to the circumstances of a particular job." If the criminal offense does not relate to the job, MUST the employer hire the person? State law says no. Current law does not allow an employer to automatically reject an applicant simply because of the felony record. Employers can refuse to hire for other reasons.

The IRR Section of the State Bar of Wisconsin believes current law strikes the appropriate balance. It promotes the common goal of reducing recidivism while giving employers the ability to refuse to hire felons whose offense relates to the job.

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For these reasons, the IRR Section strongly opposes Assembly Bill 30 and urges you to vote against this legislation.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.